

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Jurisdictional Separations and Referral to the
Federal-State Joint Board
CC Docket No. 80-286

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 20, 2017

Released: March 20, 2017

Comment Date: (14 days after date of publication in the Federal Register)
Reply Comment Date: (21 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (Further Notice), we propose a further eighteen month extension of the freeze of jurisdictional separations category relationships and cost allocation factors for rate-of-return incumbent local exchange carriers (ILECs) while we continue to work with the Federal-State Joint Board on Jurisdictional Separations (Joint Board) to overhaul our separations rules. The separations rules have long been frozen in recognition of the sweeping technical and regulatory changes that have been occurring in the communications sector over the last two decades. Having made progress in implementing changes to our intercarrier compensation regime and to the high cost universal services support program, and having recently reformed our Part 32 accounting rules, now is the time to address the separations rules. In this Further Notice, we seek comment on the proposed extension and describe the path we envision towards comprehensive reform of the jurisdictional separations procedures embodied in the Commission's rules.

II. BACKGROUND

2. Historically, ILECs were subject to rate-of-return rate regulation at both the federal and state levels. After the adoption of the 1996 Telecommunications Act (1996 Act), the Commission initiated a proceeding to comprehensively reform the Part 36 separations procedures to ensure compliance with the objectives of the 1996 Act, as well as statutory, technological, and market changes in the telecommunications industry.

3. Jurisdictional separations is the third step in a four-step regulatory process that begins with a carrier's accounting system and ends with the establishment of tariffed rates for the ILEC's interstate and intrastate regulated services. First, carriers record their costs into various accounts in accordance with the Uniform System of Accounts for Telecommunications Companies (USOA) prescribed by Part 32 of our rules. Second, carriers divide the costs in these accounts between regulated and nonregulated activities in accordance with Part 64 of our rules. This division ensures that the costs

1 Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997) (1997 Separations Notice).

2 47 CFR Part 32. The Part 32 USOA specifies the accounts that incumbent LECs must use to record their costs.

3 The Part 64 cost allocation rules are codified at 47 CFR §§ 64.901-904. Nonregulated activities generally consist of activities that have never been subject to regulation under Title II; activities formerly subject to Title II regulation that we have preemptively deregulated; and activities formerly subject to Title II regulation that have been deregulated at the interstate level, but not preemptively deregulated, that we decide should be classified as

(continued....)

of nonregulated activities will not be recovered in regulated interstate service rates. Third, carriers separate the regulated costs between the intrastate and interstate jurisdictions in accordance with our Part 36 separations rules.⁴ In certain instances, costs are further disaggregated among service categories.⁵ Finally, carriers apportion the interstate regulated costs among the interexchange services and rate elements that form the cost basis for their exchange access tariffs. For carriers subject to rate-of-return regulation, this apportionment is performed in accordance with Part 69 of our rules.⁶

4. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative, technological, and market changes warranted comprehensive reform of the separations process.⁷ In the *2001 Separations Freeze Order*, the Commission froze, on an interim basis, the Part 36 jurisdictional separation rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.⁸ Specifically, the Commission adopted a freeze of all Part 36 category relationships and allocation factors for price cap carriers, and a freeze of all allocation factors for rate-of-return carriers.⁹ The Commission concluded that several issues, including the separations treatment of Internet traffic, should be addressed in the context of comprehensive separations reform.¹⁰ The Commission further concluded that the freeze would provide stability and regulatory certainty for ILECs by minimizing any impacts on separations results that might occur due to circumstances not contemplated by the Commission's Part 36 rules, such as growth in local competition and new technologies.¹¹ The Commission also found that a freeze of the separations process would reduce regulatory burdens on ILECs during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.¹² Under the freeze, price cap ILECs calculate: (1) the relationships between categories of investment and expenses within Part 32 accounts; and (2) the jurisdictional allocation factors, as of a specific point in time, and then lock

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nonregulated activities for Title II accounting purposes. See 47 C.F.R. § 32.23(a). Some regulated activities are treated as nonregulated activities for purposes of Part 64 cost allocation. See *Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-150, 11 FCC Rcd 17539 (1996).

⁴ 47 C.F.R. Part 36. Because some costs are directly assigned to a jurisdictionally pure service category, *i.e.*, a category used exclusively for either intrastate or interstate communications, both steps are often effectively performed simultaneously. For example, the cost of private line service that is wholly intrastate in nature is assigned directly to the intrastate jurisdiction. See 47 CFR § 36.154(a).

⁵ For example, central office equipment (COE) Category 1 is Operator Systems Equipment, Account 2220. The Operator Systems Equipment account is further disaggregated or classified according to the following arrangements: (i) separate toll boards; (ii) separate local manual boards; (iii) combined local manual boards; (iv) combined toll and DSA boards; (v) separate DSA and DSB boards; (vi) service observing boards; (vii) auxiliary service boards; and (viii) traffic service positions. See 47 CFR § 36.123.

⁶ 47 C.F.R. Part 69.

⁷ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997) (*1997 Separations Notice*).

⁸ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11393-408, paras. 18-55 (*2001 Separations Freeze Order*) (describing the components of the freeze in detail).

⁹ *2001 Separations Freeze Order*, 16 FCC Rcd at 11383, para. 2.

¹⁰ *2001 Separations Freeze Order*, 16 FCC Rcd at 11383, para. 2.

¹¹ *2001 Separations Freeze Order*, 16 FCC Rcd at 11389-90, para. 12.

¹² Although ILECs were required under the Part 36 rules to perform separations studies, competitive carriers had no similar requirements. The Commission found that a freeze would further the Commission's goal of achieving greater competitive neutrality during the transition to a competitive marketplace by simplifying the separations process for those carriers subject to Part 36. *2001 Separations Freeze Order*, 16 FCC Rcd at 11390, para. 13.

or “freeze” those category relationships and allocation factors in place for a set period of time. The carriers use the “frozen” category relationships and allocation factors for their calculations of separations results and therefore are not required to conduct separations studies for the duration of the freeze. Rate-of-return ILECs are only required to freeze their allocation factors, but were given the option of also freezing their category relationships at the outset of the freeze.¹³ Price cap carriers have since received conditional forbearance from the Part 36 jurisdictional separations rules.¹⁴

5. Over time, the Commission has repeatedly extended the freeze, which is currently set to expire on June 30, 2017.¹⁵ The Commission has consistently consulted with the Joint Board about separations reform, pursuant to the Act’s requirement that the Commission refer to the Joint Board proceedings regarding “the jurisdictional separations of common carrier property and expenses between interstate and intrastate operations.”¹⁶ The Joint Board recommended the initial freeze and has made a number of recommendations to the Commission about how best to proceed with reform of the separations rules.¹⁷

¹³ *2001 Separations Freeze Order*, 16 FCC Rcd at 11388–89, para. 11.

¹⁴ In 2008 the Commission conditionally granted petitions for forbearance from the Part 36 jurisdictional separations rules to AT&T, BellSouth, Verizon, and Qwest. *See* Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules, WC Docket Nos. 07-21 et al, Memorandum Opinion and Order, 23 FCC Rcd 7302, 7307, para. 12 (2008); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190 et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647, 13662-63, para. 27 (2008). In 2013 the Commission extended the conditional forbearance grant to the remaining price cap ILECs. *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Memorandum Opinion and Order, 28 FCC Rcd 7627, 7646-54, paras. 31-51 (2013) (*USTelecom Forbearance Long Order*), *pet. for rev. denied sub nom. Verizon v. FCC*, 770 F.3d 961 (D.C. Cir. 2014).

¹⁵ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 29 FCC Rcd 6470 (2014) (*2014 Separations Freeze Extension Order*). *See also* *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5523, para. 16 (2006) (*2006 Separations Freeze Extension and Further Notice*); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009) (*2009 Separations Freeze Extension Order*); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046 (2010) (*2010 Separations Freeze Extension Order*); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011) (*2011 Separations Freeze Extension Order*); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593 (2012) (*2012 Separations Freeze Extension Order*).

¹⁶ 47 U.S.C. § 410(c); *see also* *Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket No. 80-339, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 78 FCC 2d 837, 838, para. 2 (1980).

¹⁷ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 0-286, Recommended Decision, 15 FCC Rcd 13160 (Fed-State Jt. Bd. 2000) (2000 Separations Recommended Decision); *Federal-State Joint Board on Separations Seeks Comment on Proposal for Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 3336 (Fed.-State Jt. Bd. 2010); *Federal-State Joint Board on Jurisdictional Separations Announces September 24, 2010 Meeting and Roundtable Discussion of Jurisdictional Separations Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 13245 (2010).

III. DISCUSSION

6. We propose to extend the existing separations freeze for an additional eighteen months while we work to reform the separations rules. As with our prior freezes, we propose that the freeze extension be implemented as described in the *2001 Separations Freeze Order*.¹⁸ Specifically, we propose to direct rate-of-return ILECs to continue to use the same frozen jurisdictional allocation factors, and the same frozen category relationships if they had opted previously to freeze those relationships.¹⁹ We seek comment on this proposal. Are there adjustments we should make on a going-forward basis to the current freeze?

7. The policy changes adopted by the Commission in recent years, particularly those arising from the Commission's fundamental reform of the high cost universal service support program and intercarrier compensation systems in the *USF/ICC Transformation Order* and from our recent changes to the Part 32 accounting rules, will significantly affect the Commission's and the Joint Board's analysis of interim and comprehensive separations reform.²⁰ We believe that extending the freeze for eighteen months will allow the Joint Board sufficient time to consider the impact of our recent reforms on the separations rules and will allow us the opportunity to fashion a Notice of Proposed Rulemaking that benefits from the Joint Board's consideration of how best to approach separations reform. We seek comment on this proposed path forward, and invite commenters to identify alternative approaches.

8. One significant benefit of extending the freeze while we undertake reform will be to provide stability and regulatory certainty for ILECs during the reform process. As the Commission has observed, if the frozen category relationships and allocation factors were unfrozen, ILECs would be required to reinstitute their separations processes that have not been used since the inception of the freeze almost sixteen years ago.²¹ Reinstating these requirements would require substantial training and investment. Moreover, given the significant changes in technologies and investment decisions, as well as changes in regulatory approaches at both the state and federal levels, the existing separations rules are likely outdated. We anticipate that extending the jurisdictional separations freeze would provide rate-of-return ILECs with certainty in the near future as they continue apportioning costs as they have since the *2001 Separations Freeze Order*, and would be preferable to re-imposing the burden of the separations rules.²² We seek comment on these on other benefits or drawbacks to a continued freeze.

9. We also seek comment on the effect that our proposal to extend the freeze would have on small entities, and whether any rules that we adopt should apply differently to small entities. We seek comment on the costs and burdens of an extension on small ILECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

10. The Joint Board has a pending referral to consider broadly any appropriate changes to the separations rules.²³ We will evaluate whether other discrete issues should be referred to the Joint Board.

¹⁸ *2001 Separations Freeze Order*, 16 FCC Rcd at 11393-408, paras. 18-55 (describing the components of the freeze in detail).

¹⁹ See, e.g., *2014 Separations Freeze Extension Order*, 29 FCC Rcd at 6472, para. 5.

²⁰ In 2011, the Commission comprehensively reformed the universal service and intercarrier compensation systems and proposed additional reforms. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). On February 23, 2017, the Commission completed its review of its Part 32 Uniform System of Accounts (USOA) rules and streamlined various accounting requirements for all carriers and eliminated certain accounting requirements for large carriers.

²¹ See *2014 Separations Freeze Order*, 29 FCC Rcd at 6474-75, para. 12.

²² See *2014 Separations Freeze Extension Order*, 29 FCC Rcd at 6474-75, paras. 11-12.

²³ See *2009 Separations Freeze Extension Order*, 25 FCC Rcd at 6167-69, paras. 15-20.

We anticipate that the Joint Board will meet in July 2017 to consider reform of the separations process. We expect to receive the Joint Board's recommendations for comprehensive separations reform within nine months thereafter, that is, in April 2018.

IV. PROCEDURAL MATTERS

11. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Section 1.415(b) of the Commission's rules does not establish a minimum time period for the Commission to receive comments on proposed rules. Rather, the rule states that a "reasonable time will be provided for submission of comments."²⁴ In this proceeding, because the current separations freeze will otherwise expire on June 30, 2017, and because we expect our proposal to extend the freeze will not generate controversy, we find that it is reasonable to allow 14 days after *Federal Register* publication for the filing of comments and seven days after that for the filing of any reply comments.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

12. *Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

13. *Ex Parte Presentations.* The proceeding this Further Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made

²⁴ 47 CFR § 1.415(b); *see also* 5 U.S.C. § 553(c).

²⁵ 47 CFR §§ 1.1200 *et seq.*

during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

14. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506©(4).

15. *Initial Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),²⁶ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Further Notice of Proposed Rulemaking, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in the Appendix.²⁷ Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice indicated on the first page of this document. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²⁸

16. For further information regarding this proceeding, contact Rhonda J. Lien, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1520, or rhonda.lien@fcc.gov.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201–205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201–205, 215, 218, 220, 410, this Further Notice of Proposed Rulemaking IS ADOPTED.

18. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

²⁶ See 5 U.S.C. § 603.

²⁷ See *infra* Appendix.

²⁸ See 5 U.S.C. § 603(a).

19. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this Further Notice of Proposed Rulemaking SHALL BE EFFECTIVE on the date of publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Further Notice and the IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

2. In the *1997 Separations Notice*, the Commission noted that the network infrastructure by that time had become vastly different from the network and services used to define the cost categories appearing in the Commission's Part 36 jurisdictional separations rules, and that the separations process codified in Part 36 was developed during a time when common carrier regulation presumed that interstate and intrastate telecommunications service must be provided through a regulated monopoly.³ Thus, the Commission initiated a proceeding with the goal of reviewing comprehensively the Commission's Part 36 procedures to ensure that they meet the objectives of the Telecommunications Act of 1996 (1996 Act).⁴ The Commission sought comment on the extent to which legislative changes, technological changes, and market changes might warrant comprehensive reform of the separations process.⁵ More than eighteen years have elapsed since the closing of the comment cycle on the *1997 Separations Notice*, and more than fifteen years have elapsed since the imposition of the freeze.⁶ The industry has experienced myriad changes during that time, including reform of universal service and intercarrier compensation;⁷ therefore, we ask for comment on the impact of a further extension of the freeze.

3. The purpose of the proposed extension of the freeze is to ensure that the Commission's separations rules meet the objectives of the 1996 Act, and to allow the Commission additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry.⁸

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997) (*1997 Separations Notice*); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11387-88, para. 9 (2001) (*2001 Separations Freeze Order*).

⁴ See *1997 Separations Notice*, 12 FCC Rcd at 22122, para. 2.

⁵ See *1997 Separations Notice*, 12 FCC Rcd at 22126-31, paras. 9-19.

⁶ See *1997 Separations Notice*, 12 FCC Rcd 22120; *2001 Separations Freeze Order*, 16 FCC Rcd at 11387-88, para. 9.

⁷ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17904-18045, paras. 736-1011 (2011); *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁸ See *1997 Separations Notice*, 12 FCC Rcd at 22122, para. 2.

B. Legal Basis

4. The legal basis for the Further Notice of Proposed Rulemaking is contained in sections 1, 2, 4(i), 201-205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended.⁹

C. Description and Estimate of the Number of Small Entities to Which Rules May Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹³ Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.¹⁴

6. **Incumbent Local Exchange Carriers (incumbent LECs).** Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.¹⁵ Under the SBA definition, a carrier is small if it has 1,500 or fewer employees.¹⁶ According to the FCC’s Telephone Trends Report data, 1,307 incumbent LECs reported that they were engaged in the provision of local exchange services.¹⁷ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹⁸ Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

7. We have included small incumbent LECs in this RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹⁹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs

⁹ 47 U.S.C. §§ 151, 152, 154(i), 201–205, 215, 218, 220, 410.

¹⁰ See 5 U.S.C. § 603(b)(3).

¹¹ See 5 U.S.C. § 601(6).

¹² See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹³ See 15 U.S.C. § 632.

¹⁴ See SBA, Office of Advocacy, “Frequently Asked Questions,” *available at* http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf (last accessed March 14, 2014).

¹⁵ See 13 CFR § 121.201, NAICS code 513310.

¹⁶ See 13 CFR § 121.201, NAICS code 517110.

¹⁷ See *Trends in Telephone Service*, Federal Communications Commission, WCB, Industry Analysis and Technology Division, at Table 5.3, page 5-5 (Sep. 2010).

¹⁸ *Id.*

¹⁹ See 5 U.S.C. § 601(3).

are not dominant in their field of operation because any such dominance is not “national” in scope.²⁰ Because our proposals concerning the Part 36 separations process will affect all incumbent LECs providing interstate services, some entities employing 1,500 or fewer employees may be affected by the proposals made in this Further Notice. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. None.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.²¹

10. As described above, more than fifteen years have elapsed since the imposition of the freeze, thus, we are seeking comment on the impact of a further extension of the freeze. We seek comment on the effects our proposals would have on small entities, and whether any rules that we adopt should apply differently to small entities. We direct commenters to consider the costs and burdens of an extension on small incumbent LECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

11. We believe that implementation of the proposed freeze extension would ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1,500 employees or fewer, to complete certain annual studies formerly required by the Commission’s rules. If an extension of the freeze can be said to have any effect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs by relieving these carriers from the burden of preparing separations studies and providing these carriers with greater regulatory certainty.

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

12. None.

²⁰ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

²¹ See 5 U.S.C. § 603(c)(1)–(4).